

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 289 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HEIRS OF DECEASED RAMESHBHAI KALIDAS JOSHI

Versus

DISTRICT DEVELOPMENT OFFICER, VADODARA.

Appearance:

MR BC DAVE for Petitioners

None present for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 23/07/96

ORAL JUDGMENT

Heard learned counsel for the petitioners. The only contention made by the learned counsel for the petitioners is that the order of the Tribunal to the extent where it declined to grant the arrears of pay to deceased Rameshbhai Kalidas Joshi for the period from the date he was relieved till 7.7.1982 is illegal.

2. Under the order dated 16.12.76, the Deputy District Development Officer ordered the petitioner to be

removed from the services as he was found guilty of misconduct alleged against him. Against the order of removal, the petitioner submitted an application on 2.3.77 to the Development Commissioner, Gujarat State. Nothing has been done on the said application and as such, deceased Rameshbhai approached this Court by filing Special Civil Application No.1557 of 1981. This Special Civil Application has been decided by this Court on 23rd November 1981. The order of this Court reads as under:

"Mr. Mohit Shah for the District Development Officer states that the petitioner's representation dated 2.3.1977 will be treated as an appeal and the same will be disposed of on merits. Should the petitioner succeed, the question as to whether full, part of if at all as the back wages should be awarded to the petitioner having regard to the delay occasioned on his account may be decided by the appellate officer, that is, District Development Officer in appeal in view of this, Mr. Mehta withdraws the petition. Rejected as withdrawn. Notice discharged."

3. This Court, on the undertaking given by the counsel for the District Development Officer, directed to treat the application of the petitioner dated 2.3.77 as an appeal against the order of removal and to dispose of the same on merits. The Tribunal has declined to grant back wages for the period from the date of removal to the date on which appeal has been decided on the ground that the deceased employee is responsible for delay in filing of the appeal. The Tribunal has interfered with the punishment which has been given to the deceased employee and the punishment of removal was ordered to be substituted by punishment of reduction in pay by three stages for a period of three years.

4. I find sufficient merits in the contention of learned counsel for petitioners and I am satisfied that the order of the Tribunal to the extent where it declines to grant the arrears of salary for the period from the date of removal of deceased Rameshbhai till the date of decision by the first appellate authority dated 7.7.82, is perverse. The petitioner has not made any delay in filing of the appeal. Instead of filing the appeal, he moved an application and the respondent has proceeded technically and not treated it to be an appeal. The deceased employee approached this Court and the counsel for the respondent-District Development Officer, has conceded that the application dt.2.3.77 shall be

considered as an appeal. In view of this fact, it cannot be said that the petitioner made any delay in filing of the appeal.

5. In the result, this writ petition succeeds in part. The order of the Tribunal to the extent where it declines to grant arrears of salary to the deceased Rameshbhai Kalidas Joshi, for the period from the date of his removal from service till the date of decision of first appeal dated 7.7.82, is set aside. The respondent is directed to pay, Smt.Gahantaraben R. Joshi, widow of deceased employee, the arrears of salary for the period from the date of removal of deceased Rameshbhai from service till 7.7.82, the date on which first appeal was decided, within a period of three months from the date of receipt of certified copy of this order. In case the aforesaid arrears of salary is not paid to Smt.Gahantaraben, within the aforesaid period, she will be entitled to interest on this amount at the rate of 18% p.a. from today till the date of payment of arrears. The respondent is also directed to pay to the petitioners, Rs.1000/- by way of costs of this petition. Rule is made absolute in aforesaid terms.

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(sunil)